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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DUNCAN M. KITCHIN

Appeal 2008-2598
Application 09/841,657
Technology Center 2600

Decided: September 15, 2008

Before KENNETH W. HAIRSTON, MAHSHID D. SAADAT,
and KARL D. EASTHOM, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1-6 and 8-30, which are all of the claims pending in this application as claim 7 is canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

STATEMENT OF THE CASE

Appellant's invention relates to a system for managing bandwidth in a Wireless Local Access Network (WLAN) supporting variable bit rate when the negotiated bit rate changes and the existing bandwidth agreement becomes invalid (Spec. 2-3). According to Appellant, instead of interrupting the transfer of data, bandwidth allocation is managed more efficiently to accommodate the bit rate change (*id.*).

Independent Claim 1 is representative and reads as follows:

1. An apparatus, comprising:

an interface to transmit data to a receiving device; and

a controller communicatively coupled to the interface, the controller to detect a bit rate change event and in response to said event to transmit a first portion of the data using reserved bandwidth and a second portion of the data using unreserved bandwidth in response to detecting the bit rate change event.

The Examiner relies on the following prior art in rejecting the claims:

Newberg	US 6,680,930 B2	Jan. 20, 2004 (filed Jan. 16, 2001)
Alperovich	US 6,751,477 B1	Jun. 15, 2004 (filed May 17, 2000)

Claims 1-5, 8, and 18-30 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Newberg.

Claims 6 and 9-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Newberg and Alperovich.¹

¹ The Examiner erroneously includes cancelled claim 7 as rejected. (*Compare* Ans. 4 *with* Reply, filed August 18, 2005).

Rather than repeat the arguments here, we make reference to the Briefs and the Answer for the respective positions of Appellant and the Examiner.

ISSUE

The issue is whether the Examiner erred in rejecting the claims under 35 U.S.C. §§ 102(e) and 103(a). The issue specifically turns on whether Newberg anticipates Appellant's claimed invention by disclosing a controller that transmits a second portion of the data on an unreserved bandwidth in response to the detection of bit rate change event.

FINDINGS OF FACT

1. Newberg relates to a radio frequency communications system wherein upon determining the requirements for bandwidth for transmission, the necessary channel bandwidth, if available, is reserved or allocated to guarantee performance. (Abstract).
2. As depicted in Figure 5 of Newberg, allocating or reserving resources may be carried out based on certain requirements for the application, such as bit rate, packet size, compression rate, etc., which are generated per the application (col. 5, ll. 35-51).
3. The requests are routed to a gatekeeper 112 which serves as the bandwidth management device (col. 5, ll. 61-65) and determines if the required bandwidth is available according to the application requirements (col. 6, ll. 21-24).
4. If the channel requirements cannot be met with the available bandwidth, the transmission request is denied and the call terminated (col. 6,

ll. 30-35), whereas the bandwidth is reserved if the required channel bandwidth is available (col. 6, ll. 36-38).

5. Newberg further discloses that the gatekeeper 112 assesses the traffic and channel requirements and makes adjustments to the bandwidth allocation based on a comparison between the actual allocation and the predicted channel bandwidth to be allocated or reserved (col. 7, ll. 5-16).

6. Newberg discloses that if an additional application makes a new bandwidth request, new channel requirements are determined and new bandwidth is reserved if the request can be satisfied, otherwise, the request is denied (col. 7, ll. 17-29).

PRINCIPLES OF LAW

A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference. *See In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994). “Anticipation of a claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (quoting *Titanium Metals Corp. of Am. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

ANALYSIS

Appellant argues that the new bandwidth request 518 in Figure 5 of Newberg is a request from an additional application, not a bit rate change in the same application that was previously the subject of a reserved bandwidth (App. Br. 11; Reply Br. 2). Appellant asserts that the relied on portion does not disclose any unreserved bandwidth and merely relates to the request by a different application (*id.*).

The Examiner points to the same Figure 5 and its accompanying text (col. 7, ll. 20-30) and asserts that determining whether additional bandwidth is required in step 518 is the same as the claimed “detecting the bit rate change” (Ans. 6). The Examiner argues that the process loops back to step 504 when more bandwidth is needed for transmitting data over additional bandwidth, which is the same as transmitting the second portion of the data (*id.*). With respect to the reserved and unreserved bandwidth, the Examiner argues that the additional bandwidth is allocated from an unreserved bandwidth pool (*id.*).

We disagree with the Examiner’s characterization (Ans. 6) of the allocation of additional bandwidth to additional applications of Newberg as the claimed transmitting a second portion of data using unreserved bandwidth. We observe that the Examiner characterizes the additional application as the second portion of the data for which additional bandwidth is allocated from an unreserved bandwidth pool (Ans. 6). The Examiner also equates the determination of available bandwidth based on the application requirements to the claimed “detecting the bit rate change event” (*id.*).

As argued by Appellant (App. Br. 11), the additional application involves a separate and different transmission with a new request and different requirements to be met by the gate keeper 112 (FF 3-4). While the newly requested bandwidth is selected from the available bandwidths that match the requirements of the application (FF 6), this unreserved bandwidth is used for transmitting data in a different application, and not a second portion of the data from an application which was previously allocated a bandwidth (FF 4-6).

As such, we agree with Appellant that, since Newberg reserves the additional bandwidth for a new application with a new request, there is no transmission of the second portion of the data using unreserved bandwidth. In fact, the bandwidth for the new application is determined based on the new request for bandwidth by the new application, and not in response to detecting the bit rate change event. In other words, as pointed out by Appellant (Reply Br. 2-3), the bit rate change in Newberg is related to the requirements for the application which includes bit rate (FF 1-2) changes that occur only after a new bandwidth is allocated (FF 1-2).

CONCLUSION

On the record before us, we find that the Examiner fails to make a prima facie case that Newberg anticipates claim 1 or other independent claims 18 and 24 which include similar limitations. Therefore, in view of our analysis above, the 35 U.S.C. § 102 rejection of claims 1-5, 8, and 18-30 as anticipated by Newberg cannot be sustained. Additionally, we do not sustain the 35 U.S.C. § 103 rejection of claims 6 and 9-17 over Newberg and Alperovich since the Examiner has not identified any teachings in the secondary reference related to transmitting a first portion of the data using reserved bandwidth and a second portion of the data using unreserved bandwidth in response to detecting the bit rate change event or a reduced bit rate to overcome the deficiencies of Newberg discussed above.

Appeal 2008-2598
Application 09/841,657

DECISION

The decision of the Examiner rejecting claims 1-6 and 8-30 is reversed.

REVERSED

KIS

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